IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal From Order No. 522 of 2005

Date of decision: 31st July, 2006

A.F.R. (Approved for Reporting)

~~Not approved for Reporting~~

Date 31.7.2006.

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 522 of 2005

1. Smt. Babli w/o late Sri Ram Prasad Saini @ Bablu
2. Vivek Kumar s/o late Sri Ram Prasad Saini @ Bablu aged about 9 years
3. Vinay Kumar s/o late Sri Ram Prasad Saini @ Bablu aged about 8 years
4. Balbeer Singh Saini s/o late Sri Genda Singh
5. Smt. Sumitra w/o Balbeer Singh Saini

all residents of Rishikesh, Dehradun, at present r/o Dhalwala, Rishikesh, Tehri Garhwal ……. Appellants

Versus

1. Sunder Lal Raturi s/o Sri Sohan Lal Raturi R/o Konark Bus Service, Jassa Ram Road, Haridwar (Owner)
2. Shri Vimal Singh s/o Ganga Singh C/o Sohan Lal Raturi, Konark Bus Service, Jassa Ram Road, Haridwar (Driver)
3. The New India Assurance Company Ltd. through its Branch Manager, Astle Hall, Dehradun. ……. Respondents

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Mrs. Farida Siddique, Advocate for the appellants.
None for respondents 1 and 2.
Sri V. K. Kohli, Senor Counsel with Sri I. P. Kohli, Advocate for respondent no. 3.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C. J. (Oral)

Mr. Farida Siddique, Advocate for the appellants.

None for respondents 1 and 2.

Sri V.K. Kohli, Senor Counsel with Sri I.P. Kohli, Advocate for respondent no. 3.

2. As the learned counsel for the parties are prepared and willing to argue the appeal finally, they are heard.

3. This is claimants' appeal for enhancement of the compensation awarded by Motor Accidents Claims Tribunal / District Judge, Dehradun

vide Award dated 02.09.2005 passed in Motor Accident Case No. 158 of 2004.

4. The claimants had claimed compensation of Rs. 28,25,000/- for the death of Ram Prasad Saini, husband of claimant no. 1 Smt. Babli, father of claimants 2 and 3 Vivek Kumar & Vinay Kumar and son of claimants 4 and 5 Sri Balberer Singh Saini and Smt. Sumitra, in a motor accident on 16.07.2004 when his motor cycle bearing registration no. UA-09/1553 was dashed by the offending vehicle – bus bearing registration no. UA 08/4201 resulting in serious injuries to him which ultimately led to his death. The claimants further pleaded that deceased Ram Prasad Saini was a private contractor and used to earn Rs. 10,000/- per month.

5. The owner and driver of the offending vehicle did not contest the claim and remained ex parte before the Tribunal.

6. The insurer of the offending vehicle-bus i.e. New Delhi Assurance Company Ltd. contested the claim and pleaded that deceased himself was responsible for the accident and as such the Insurance Company was not liable to pay compensation to the claimants.

7. The Tribunal, on the evidence led by the parties, held that deceased Ram Prasad Saini died on account of the injuries sustained by him in the motor accident on 16.07.2004; the accident occurred due to rash and negligent driving of the driver of the offending vehicle-bus; and the Insurance Company was liable to pay compensation to the claimants.

8. Considering the evidence led by the claimants about the income of the deceased, the Tribunal assessed the income of the deceased at Rs.3,000/- per month and Rs. 36,000/- per annum. After deducting one third of the said amount as his personal expenses, the claimants' dependency was assessed at Rs. 24,000/- per annum. The Tribunal selected the multiplier of 15 and by multiplying the dependency of Rs. 24000/- per annum by multiplier of 15, the compensation was worked out at Rs. 3,60,000/-. The Tribunal awarded further sum of Rs. 31,000/- under other heads. Thus a total sum of Rs. 3,91,000/- was awarded as compensation to

the claimants for the death of Ram Prasad Saini in the motor accident. The Tribunal further directed that on the failure of the Insurance Company to pay the amount of compensation within a period of one month from the passing of the Award, the claimants shall be further entitled to interest @ 9% per annum on the amount of compensation.

9. Mrs. Farida Siddique, the learned counsel for the appellants vehemently argued that the Tribunal has erred in assessing the income of the deceased at Rs. 3000/- per month only, though the deceased was earning Rs. 10,000/- per month. The learned counsel further submitted that the multiplier of 15 selected by the Tribunal is on the lower side and the Tribunal ought to have selected multiplier of 18 as is prescribed in the Second Schedule of the Motor Vehicles Act, 1988.

10. Sri Kohli, the learned Senior Counsel for respondent no. 3, on the other hand, supported the Award and submitted that in the absence of reliable evidence about the income of the deceased, the Tribunal was right in assessing the income of the deceased at Rs. 3,000/- per month. The learned counsel further submitted that the compensation of Rs. 3,91,000/- awarded by the Tribunal cannot be said to be inadequate so as to warrant enhancement in this appeal.

11. The findings recorded by the Tribunal that deceased Ram Prasad Saini died on account of injuries sustained by him in the accident; accident occurred due to rash and negligent driving of the driver of the offending vehicle-bus; and that the Insurance Company is liable to pay compensation, to the claimants, have now attained finality as the respondents have not filed any appeal against the Award.

12. Though the claimants in their claim petition pleaded that deceased Ram Prasad Saini used to earn Rs. 10,000/- per month, but no reliable evidence was adduced before the Tribunal in support of the said fact. In the absence of the cogent and reliable evidence in that behalf, we do not find any infirmity in the findings recorded by the Tribunal whereby the income

of the deceased was assessed at Rs. 3,000/- per month and Rs. 36,000/- per annum.

13. At the time of the accident, deceased Ram Prasad Saini was 29 years of age. His widow Smt. Babli has been shown to be aged about 28 years in the claim petition and his two minor sons- Vivek Kumar and Vinay Kumar, were aged about 9 and 8 years, respectively. The Multiplier of 15 selected by the Tribunal, considering the age of the deceased Ram Prasad Saini, his widow Smt. Babli and his minor sons – Vivek Kumar and Vinay Kumar, is certainly on the lower side. The Second Schedule of the Motor Vehicles Act, 1988, prescribes multiplier of 18 for the age ground between 25 to 30. The Apex Court in the case of Kanhiyalal Kataria and others Vs. Mukul Chaturvedi and others reported in (2005) 12 SCC 190 where the age of the deceased was 32 years, has held the multiplier of 17 to be appropriate. In our opinion, the multiplier of 17 would be appropriate in the present case.

14. By multiplying the annual dependency of Rs. 24,000/- (Twenty Four Thousand only), arrived at by the Tribunal, by the multiplier of 17, the compensation works out to Rs.4,08,000/- (Four Lacs Eight Thousand only). By adding the further sum of Rs. 31,000/- awarded by the Tribunal under other heads, the total compensation works out to Rs. 4,39,000/- (Four Lacs Thirty Nine Thousand only).

15. For the foregoing reasons, the appeal filed by the claimants under Section 173 of the Motor Vehicles Act for enhancement of the compensation is partly allowed. The compensation of Rs. 3,91,000/- (Three Lacs Ninety One Thousand only) awarded by the Tribunal is enhanced to Rs. 4,39,000/- (Four Lacs Thirty Nine Thousand only). The enhanced compensation shall carry interest @ 6% per annum from the date of the application.

16. No order as to costs.

(J.C.S. Rawat, J.) 31.07.2006

(Rajeev Gupta, C.J.) 31.07.2006

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